IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CWP No.17246 of 2007
Date of decision:16.11.2007

Surinder Kumar Gupta & another.

…Petitioners

Vs.

State of Punjab and ors.

…Respondents

CORUM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAI LAMBA.

Present: Mr. Pawan Kumar, Advocate
for the petitioner.

Adarsh Kumar Goel, J.

This petition seeks quashing of orders dated 24.10.2007, Annexures P-7 and P-8, dismissing the petitioners from service. Further direction for reinstatement has also been sought in the light of orders dated 16.9.2002, Annexures P-5 and P-6.

Case of the petitioners is that they joined service in the State of Punjab in the year 1970. A complaint was made in the year 1997, alleging demand and acceptance of illegal gratification by the petitioners. The same led to registration of FIR and trial of the petitioners, who were convicted under the Corruption Act and were sentenced to undergo RI for 4 years and to pay Rs.2500/- each vide judgment dated 16.4.2002, Annexure P-1. Based thereon, the petitioners were ordered to be dismissed from service by the Director, Food and Supplies, vide orders dated 30.4.2002,

Annexures P-2 and P-3. They preferred appeals, which were accepted vide order dated 16.9.2002, but thereafter, by the impugned orders, the petitioners have again been dismissed from service.

We have perused the impugned order which refers to clarification issued by the Chief Secretary, Punjab dated 14.8.2007, to the effect that employees who were caught red-handed, held guilty by a competent Court and were convicted and sentenced, could not be kept in service, even if appeal was pending. Earlier order of reinstatement was based on the understanding that if appeal was pending, the employee was entitled to continue in service.

We have heard learned counsel for the petitioners who submitted that the impugned order amounted to *suo motu* review which is not permissible and that since appeal against conviction of the petitioners was pending, which was continuation of trial, the order of conviction could not be relied upon. Reliance has been placed on judgment of the Hon'ble Supreme Court in ***Smt. Akhtari Bi, v. State of M.P.*** AIR 2001 SC 1528.

We do not find any merit in the contention raised.

It is well-settled that mere pendency of appeal or revision against conviction of a public servant cannot be a ground to continue a public servant in service. Such a course will erode the confidence of people in public institutions. Suspension of sentence does not amount to suspension of conviction. Reference

may be made to judgments of the Hon'ble Supreme Court in **K.C.Sareen v. CBI, Chandigarh** AIR 2001 SC 3320, Para 11, **B.R.Kapur v. State of Tamilnadu** AIR 2001 SC 3435, Paras 34, 40 and 58 and **Union of India and another v. Tulsiram Patel and others** AIR 1985 SC 1416, Para 70. The misconduct for which the petitioner has been convicted, is serious and imposition of punishment of dismissal cannot be held to be disproportionate.

The judgment of the Hon'ble Supreme Court in ***Smt. Akhtari Bi*** (*supra)* is on a bail matter and does not deal with the issue involved herein and is, thus, distinguishable.

As regards question of permissibility of review, we do not consider it necessary to go into that question having regard to the fact that the petitioners having been convicted for corruption, interference with the impugned order will be against public interest. It is well settled that extraordinary jurisdiction under Article 226 of the Constitution may not be invoked even against an illegal order if interference would be against public interest. Reference may be made to law laid down by the Hon'ble Supreme Court in ***Chandra Singh*** **v.** ***State of Rajasthan and another*** **AIR 2003 SC 2889.**

In view of above, the petition is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

November 16, 2007 **(AJAI LAMBA)**

ashwani **JUDGE**